IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

OP.No. 36119 of 2002(Y)

PETITIONER:

THRESIA .M. W/O. K.VIJAYAN,
KARIYATH HOUSE, KUTTOOR NORTH P.O.,
VIA AR NAGAR, MALAPPURAM DISTRICT

BY ADV. SRI.P.V.SURENDRANATH
SRI.P.P.SUDHEER

RESPONDENTS:

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1. KIZHAKETHIL KOYA S/O. AYAMMED,
MATTATHUR, OTHUKUNGAL VILLAGE, TIRUR ANGADI,
MALAPPURAM DISTRICT

2. ADAMKUTY, MEMBER, OTHUKUNGAL GRAMA
PANCHAYATH MEMBER, MATTATHUR, OTHUKUNGAL VILLAGE,
TIRURANGADI, MALAPPURAM DISTRICT.

3. VENGARA BLOCK PANCHAYATH, REPRESENTED BY
ITS SECRETARY, VENGARA, MALPPURAM DISTRICT

4. SECRETARY, VENGARA BLOCK PANCHAYATH,
VENGARA, MALAPPURAM DISTRICT

5. OTHUKUNGAL GRAM PANCHAYATH, REPRESENTED
BY ITS SECRETARY, MALAPPURAM DISTRICT

6. THE SECRETARY,
OTHUKUNGAL GRAM PANCHAYATH, MALAPPURAM DISTRICT

7. DISTRICT COLLECTOR, MALAPPURAM DISTRICT

8. SUB DIVISIONAL MAGISTRATE/REVENUE
DIVISIONAL OFFICER, TIRUR, MALAPPURAM DISTRICT

9. SUPERINTENDENT OF POLICE,
MALAPPURAM DISTRICT

10. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO HOME DEPARTMENT, SECRETARIATE,
THIRUVANANTHAPURAM.

R1 & R2 BY ADV. SRI.K.K.MOHAMED RAVUF
R3 TO R6 BY ADV. SRI.K.P.MUJEEB
R7 TO R10 BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.61119/02 IN OP NO.36119/02 Y

DISMISSED

13.12.2007 SD/ K. M. JOSEPH, JUDGE

APPENDIX IN OP NO.36119 OF 2002:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE TITLE DEED ALONG WITH THE SKETCH PLAN.

EXT.P2 TRUE COPY OF THE COMMITTAL ORDER DATED 16.1.2002 IN CP. 59/2001 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE, MALAPPURAM.

EXT.P3 TRUE COPY OF THE C OMPLAINT DATED 21.4.1998 FILED BEFORE POLICE, DISTRICT COLLECTOR AND HONOURABLE CHIEF MINISTER OF KERALA.

EXT.P4 TRUE COPY OF THE PETITION SUBMITTED BEFORE THE LEGISLATIVE SUB COMMITTEE FOR PROTECTION OF WOMEN AND CHILDREN, ON 30.10.2002.

EXT.P5 TRUE COPY OF THE COMPLAINT DATED 8.10.2002 BEFORE THE OTHUKUNGAL GRAMA PANCHAYAT.

EXT.P6 TRUE COPY OF THE COMMUNICATION DATED 10.10.2002 ISSUED BY THE OTHUKUNGAL GRAMA PANCHAYAT.

EXT.P7 TRUE COPY OF THE WRITTEN SUBMISSIONS MADE BY PETITIONER BEFORE THE OTHUKUNGAL GRAMA PANCHAYAT ON 21.10.2002.

EXT.P8 A SKETCH PLAN SHOWING THE ENCROACHMENT INTO THE PETITIONER'S PROPERTY.

EXT.P9 TRUE COPY OF THE SURVEY MAP/FILED MAP PREPARED BY THE SUPDT. OF SURVEY AND LAND RECORDS, COLLECTORATE, MALAPPURAM.

RESPONDENTS EXHIBITS:

ANNEXURE A: TRUE COPY OF THE SKETCH.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

O.P NO. 36119 OF 2002 Y

Dated this the 13th December, 2007

JUDGMENT

Petitioner has approached this Court seeking the following reliefs:

> "(i) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to stop the construction and/or tarring of the alleged Parangadi-Chalipadom Road touching along the boundary of the petitioner's property evidenced by Ext.P1.
>
> (ii) Issue a writ of mandamus or any other appropriate writ or direction commanding the respondents 3 to 10 to take immediate steps on the petitioner's representations, Exts.P3, P4, P5 etc. forthwith and not to trespass into petitioner's property evidenced by Ext.P1."

2. Case of the petitioner, in brief, is as follows:

Petitioner is residing with her husband twenty kilo

metres away from Ext.P1 property. Petitioner is Scheduled Caste unemployed woman. She is in possession of an extent of fourteen cents in RS. No.223/14 of Othukungal Village, Matathur Amsom of Thirurangadi Taluk. Ext.P1 is produced as the title deed. The grievance projected by the petitioner is that two cents on the southern side of the property is encroached by respondents 1 to 6 without any authority whatsoever. According to her, she is residing twenty kilo metres away from Ext.P1 property and her only aged mother is residing there. Allegations are made against respondents 1 and 2. The second respondent is a Member of the respondent Grama Panchayat. The first respondent encroached into the petitioner's property and cut and removed valuable trees. There is reference to complaints. Ext.P2 is produced as the committal order of the Magistrate. It is stated in paragraph 3 that during the pendency of the above proceedings, respondents 1 and 2 again encroached and trespassed into the petitioner's property, mutilating southern portion of Ext.P1 property which was done without the consent

of the petitioner. Respondents 3 to 6 are acting in aid of respondents 1 & 2. Petitioner made complaints before the Police, District Collector and the Chief Minister (Ext.P3). Complaint was made to the Minister for SC/ST Welfare Department also. Then she approached the respondent Panchayat with Ext.P5 complaint. Ext.P7 is a written submission made by petitioner. Ext.P8 is a sketch plan showing the encroachment on the petitioner's property. In the Ground portion, it is stated as follows:

> *"Due to wrong legal advice, petitioner could not approach civil court against the respondents. If the tarring of the southern portion of the petitioner's property as Parangadi - Chalipadam Road is not prevented for some time, at least for a short period enabling the petitioner to approach the civil court for remedies, she will be severely prejudiced."*

3. No Counter Affidavit is filed by respondents 1 & 2. Petitioner has also produced Ext.P9 apparently based on the Statement filed by the 7th respondent. The 7th respondent, no

doubt, has stated that the Superintendent of Survey & Land Records was directed to measure out the property and prepare a plan and ascertain whether there is any actual encroachment upon the property. It is stated that the Superintendent of Survey and Land Records reported that an area of one cent of petitioner's property has been reduced to the portion of the road. Annexure A is the sketch.

4. I heard the learned counsel for petitioner and respondents 1 & 2. Counsel for respondents 1 & 2 points out that a civil suit is pending consideration before the Munsiff Court, Tirur. The allegations raised by the petitioner are essentially directed against respondents 1 & 2. I would think that this is not a case which calls for any direction from this Court. Accordingly, I close the Writ Petition without prejudice to the right of the parties to agitate their claims before the competent courts.

K. M. JOSEPH, JUDGE

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K. M. JOSEPH, J.

O.P NO. 36119 OF 2002 Y

JUDGMENT

13th December, 2007.